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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,094	02/12/2002	Kenneth J. Schlager	4328-00005	6713

7590
Kenneth J. Schlager
744 Winston Way
Hartland, WI 53029

12/22/2003

EXAMINER

PHASOE, ARUN S

ART UNIT PAPER NUMBER

1753

DATE MAILED: 12/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/074,094

Applicant(s)

SCHLAGER ET AL.

Examiner

Arun S. Phasge

Art Unit

1753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Objections

Claims 3-4, 7, 12, 19 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The function of the structure provides no further limitation to the prior claims.

Claim Rejections - 35 USC § 112

Claims 1-22 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. Note the format of the claims in the patent(s) cited.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 10-12, 17-21, 23-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Knieper et al. (Knieper), U.S. Patent 6,238,546 B1.

The Knieper patent discloses the claimed method and apparatus for the disinfection flow cell for disinfection of water wherein the water passes through the flow line within the flow rate comprising the spaced electrodes within the claimed range and types of electrodes, and power supply ranges (see columns 3-5). The reference further discloses the generation of hydroxyl radicals and the use of an ultrasonic transducer (see col 8, lines 36-54). The reference further does teach the use of reverse polarity (see col. 4, lines 8-18). The passage of water

through the cell with the application of the current would produce the claimed products and/or results.

Therefore, since the Knieper patent discloses each and every limitation, the claims are anticipated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 9, 13-16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knieper as applied to claims above, and further in view of Doring, U.S. Patent 5,738,778.

The Knieper patent does not disclose the use of the spectrometer to monitor the quality of the water. The Doring patent is cited to show the conventional use of spectrometers to monitor and control electrolytic systems (see col. 8, lines 45-67).

Consequently, the invention as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the disclosure of the Knieper patent with the teachings of the Doring patent, because the Doring patent teaches the use of the monitoring of the system using a spectrometer. The exact size and shape of the cell would have been an engineering modification well within the skill of the ordinary artisan, unless the shape modification produces an unexpected result.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun S. Phasge whose telephone number is

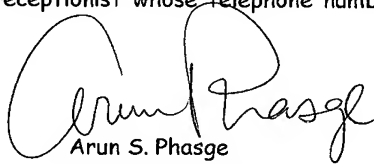
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(703) 308-2528. The examiner can normally be reached on MONDAY-THURSDAY,
7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the
examiner's supervisor, Nam X Nguyen can be reached on (703) 308-3322. The fax
phone number for the organization where this application or proceeding is assigned
is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application
or proceeding should be directed to the receptionist whose telephone number is
(703) 308-0661.

A handwritten signature in black ink, appearing to read 'Arun Phasge', is written over the printed name and title.

Arun S. Phasge
Primary Examiner
Art Unit 1753

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